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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 863

THE AKRON & BARBERTON BELT RAILROAD COMPANY, ET AL., *Petitioners,*

v.

BROTHERHOOD OF RAILROAD TRAINMEN, ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, SWITCHMEN'S UNION OF NORTH AMERICA, AND BILL DOAK LODGE DIVISION 584, BROTHERHOOD OF RAILROAD TRAINMEN, *Respondents.*

Brief of Order of Railway Conductors and Brakemen In Opposition To Petition For Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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QUESTIONS PRESENTED

Petitioners seek review of portions of the decisions of the Court below dated May 12, 1967 and July 31, 1967 (App. 33a, 75a). Respondents have filed petitions for review of other portions of the decisions below which are now pending before the Court (Nos.

861 and 862). Petitioners have presented four questions for review; in argument they have reversed the order of questions 1 and 2, and do not appear to have made any argument in support of question 3. Respondent ORCB submits that the questions presented by petitioners should be stated as follows:

1. (Petitioners' question No. 2) The Award of Arbitration Board No. 282 authorized petitioners to discontinue trainman positions by special procedures created by the Award, for a period of two years. The Arbitration Board provided that "this Award shall continue in force for two years from the date it takes effect, . . ." (App. 110a). The Award was based on a special law which also provided that "the Award shall continue in force . . . not to exceed two years . . . ." (App. 114a). May the petitioners continue to eliminate trainman positions under the special procedures of the Award, after the end of the two-year period and termination of the effective period of the Award? Or did the Court below correctly hold that "those procedures constituted a special mechanism for making changes by award, and were intended to have only a two-year life"? (App. 77a)

2. (Petitioners' question No. 1) Was it the intent of Public Law 88-108 and the Award of Arbitration Board No. 282 to require the parties to the crew-consist dispute to continue negotiations to resolve the dispute during the two-year period of effectiveness of the Award, or did Congress and the Arbitration Board intend to provide a two-year moratorium on all efforts to resolve the dispute? Did the Court below correctly hold that the petitioning carriers "must be held to have breached their statutory duty under the Railway

Labor Act to confer and bargain" when they "flatly refuse to engage in any statutory bargaining whatever prior to the expiration date"? (App. 53a-54a)

3. (Petitioners' question No. 4) Did the Court below correctly hold, because petitioners "flatly refused to engage in any statutory bargaining whatever," in violation of their obligations under the Railway Labor Act and Section III of the Award, that they "lack clean hands" and were barred from injunctive relief against respondents by the provisions of Section 8 of the Norris-LaGuardia Act?

ARGUMENT

The decision of the Court below on each of the questions presented by petitioners was correct. The rulings below are not in conflict with applicable decisions of this Court, or with decisions of other Courts of Appeal. No issues of fact are presented, for all facts were stipulated before the District Court. The reasons for review advanced by petitioners raise no questions of law of sufficient importance or merit to warrant consideration by this Court.

I

Petitioners assert that "This Court should review the holding that the procedures established by the Award for changing crew-consist rules could neither be initiated nor completed after expiration of the Award . . . ." (Petition, pp. 12-23). The petition does not make clear the purpose of this contention, nor the consequences which would flow from its adoption. During the two-year period of the Award petitioners allege that they secured the elimination of 7574 trainmen positions. What they seek is an adjudication that

they may continue to eliminate additional positions, by serving notices, and referring them to Special Boards of Adjustment under the procedures established by Section III of the Award (App. 104a), indefinitely into the future. Before the District Court and the Court of Appeals, the Respondent labor organizations contended that, at the end of the two-year period, the interim two-year rules expired, except to the extent that they had been incorporated into permanent agreements between the parties and that, where no agreement had been reached, pre-existing crew-consists must be re-established. The carriers contended that the positions eliminated by the interim rules created by Awards of Special Boards of Adjustment continued to be eliminated and, further, that the carriers could continue to eliminate additional positions under the procedures of the Award, indefinitely. The Court below took a position between these contentions; it held that positions eliminated during the two-year period continued to be eliminated, but that no additional positions might be eliminated after January 25, 1966, under the procedures of the Award. The Court below held that "those procedures constituted a special mechanism for making changes by award, and were intended to have only a two-year life." (App. 77a).

It is the position of the respondent labor organizations that the Congress and the Arbitration Board intended the interim rules (authorizing the elimination of 7574 positions) to expire at the end of the two-year period of effectiveness of the Award, unless adopted as permanent rules by agreement of the parties, and that the ruling of the Court below that the interim rules continue to survive as permanent rules between the parties after January 25, 1966, is contrary to the intent

of Congress and of the Arbitration Board. This contention of the labor organizations has been presented to this Court by their petitions for writs of certiorari in Nos. 861 and 862. The further contention of the petitioning carriers, that they may continue to utilize the procedures of the Award to eliminate additional trainman positions permanently into the future would completely frustrate the intent of Congress and the Board, and make a complete mockery of the law and of the Award.

President Kennedy asked Congress for emergency legislation authorizing "interim work rule changes . . ." for a two-year period . . . while awaiting the results of further bargaining by the parties." (Senate hearings, pp. 8-10)[1] He emphasized that he was not recommending "a general permanent compulsory arbitration law" but one which "provides only for interim decisions." Secretary of Labor Wirtz, who testified in support of the President's bill, said to the House Commerce Committee that at the end of the two-year period "the interim rule would at that point no longer be effective" (House hearings, p. 55), and agreed that ". . . that decision goes into effect and stays in effect until either the parties reach an agreement by collective bargaining or the 2-year period expires." (House hearings, p. 59) The representatives of the carriers also repeatedly represented to Congress that the Award would be "binding for two years", "it lasts only two years, . . . then it expires." (House hearings, pp. 533,

[1] References hereafter to "Senate hearings" and "House hearings" refer, respectively, to Hearings before the Senate Committee on Commerce on S.J. Res. 102, 88th Cong., 1st Sess. and to Hearings before the House Committee on Interstate and Foreign Commerce on H.J. Res. No. 565, 88th Cong., 1st Sess.

551, 565; Senate hearings, pp. 364, 370-1, 375) Indeed, the representative of the carriers opposed a suggestion that a two-year period was inadequate, saying: "I believe that we consider that interim proposition, . . . that 2 years is about as far as we should go." (House hearings, p. 555) The legislative history is replete with identical representations as to the effect of the proposed legislation. See House hearings, pp. 64, 172, 174, 605, 982; Senate hearings, pp. 49-51, 62-63, 414-415, 427.

The House and Senate Committee reports repeated the same understanding. Senate Report No. 459, 88th Congress, said:

> "Under the terms of the resolution, the arbitration award would be binding for no more than 2 years, unless the parties mutually agree to a different period. The Committee has imposed this limitation in harmony with the President's recommendation, in order to closely limit the scope and impact of the resolution." (U.S. Code Congressional and Administrative News, 1963, p. 1406)

And the House Committee, in House Report No. 713, 88th Congress, said:

> "The arbitration award is to be in effect for the period determined by the arbitration board but that period cannot exceed 2 years from the date the award takes effect; however, the award can be in effect for a different period if the parties agree thereto."

On the floor of the House, Chairman Harris of the House Commerce Committee described the situation which would prevail at the end of the two-year period by agreeing that "then it is as if this resolution had never been passed at that time." (109 Cong. Rec.

16130) And on the floor of the Senate, Senator Morse similarly described it, saying:

> "It appears to be the intention in this section, read in the light of the scheme of the resolution and of the legislative background, that these rules will provide a basis for the manning of the trains for the interim period only.
>
> "Stated conversely, the resolution does not authorize the Commission to approve rules which are dispositive of the entire manning issue for the indefinite future. The emphasis is on interim work rule procedures to be effective only until such time as the parties reach agreement regarding the entire matter or 2 years following the date the interim rule goes into effect, whichever occurs sooner." (109 Cong. Rec. 15976)

Both P.L. 88-108 and the Award specifically provided that the Award should be limited to a duration of two years. (App. 110a, 114a) Thereafter this Court had occasion to interpret the effect of the Award, and so described it. In *Brotherhood of Locomotive Engineers* v. *Chicago, Rock Island and Pacific R. Co.*, 382 U.S. 423 (January 31, 1966) this Court said:

> "The arbitration board was given power to resolve the dispute over the firemen and full-crew questions. Their award was to be a complete and final disposition of these issues for a period not exceeding two years from the date the awards would take effect . . . Congress wanted to do as little as possible in solving the dispute which was before it . . ."

The effect of the carriers' contention, that they have the right to continue to abolish crew positions under the guidelines of the Award indefinitely into the future, would make permanent what Congress and the Arbitra-

tion Board intended to be temporary. It would defeat the understanding and intention of the President, the Congress and the Arbitration Board itself. It would create a permanent system of compulsory arbitration of "major" railway labor disputes. It would continue, as permanent general law, a temporary set of rules and guidelines which were created for a two-year period only.

The carriers' contention is, of course, not based on the language of the law, or of the Award, or of their legislative history—all of these are at complete variance with the carriers' position. The contention is based solely on the syllogism that (a) under the Railway Labor Act a collective bargaining agreement for a specified term continues to survive beyond its agreed term until one party to the agreement serves and processes a Section 6 notice to terminate it; (b) an arbitration award imposed by law has the same consequences and effect as a voluntary agreement between parties; (c) P.L. 88-108 and the Award of Arbitration Board 282 must yield to the general principles governing voluntary agreements reached under the Railway Labor Act; (d) ergo; the Award continues to survive its express termination period irrespective of the intent of Congress and the Arbitration Board, the language of the law, and the language of the Award. We suggest that none of these propositions is valid. There is no support for the unusual contention that a collective bargaining agreement for a specified term continues to survive its agreed term until a party to the agreement serves and processes a Section 6 notice to terminate it. Petitioners cite no authority for this proposition other than a casual reference to *Manning* v. *American Airlines, Inc.*, 329 F. 2d 32 (C.A. 2, 1964),

which is not in point. There, before the termination date of a collective bargaining agreement the labor organization served a notice under Section 6 of the Railway Labor Act (App. 116a) proposing that the agreement be extended. Because of the language of Section 6 that a carrier may not alter existing rules and working conditions while a Section 6 notice is pending, the Court in *Manning* held that the carrier was obligated to maintain the rules and working conditions which obtained during the life of the agreement until the Section 6 notice had proceeded through the required steps of conference and mediation. Petitioners' repetition of a phrase from *Manning* that the "effect of § 6 is to prolong agreements subject to its provisions regardless of what they say as to termination" is the misuse of a phrase torn from context. It is not Section 6 which automatically prolongs all agreements; it is the service and pendency of a notice under Section 6 to extend the agreement which requires continuation of the same rules and working conditions, until the notice has proceeded through the required steps of conference and mediation. In the instant situation the petitioning carriers served no Section 6 notice on the respondents during the two-year period, proposing an extention of the effective period of the Award. On its termination date it was not subject to the provisions of Section 6, and was not continued in force.

Further, no authority or logical reason is advanced by petitioners to support the proposition that the language and intent of P.L. 88-108 must yield to some unspecified contrary provision of Railway Labor Act. The Railway Labor Act contains no requirement that either voluntary agreements or arbitration awards

shall continue to be effective beyond their express termination date. There is no inconsistency between the two enactments and, even if there were, "it is well settled that a special or specific law repeals an earlier general or broad law to the extent of any irreconcilable conflict between their provisions." 50 Am. Jur. p. 564.

The contention of the carriers that they may continue to eliminate trainmen positions indefinitely into the future, on the ground that the Award of Arbitration Board 282 has become a permanent part of the collecitve bargaining agreements between the parties, despite the intention of Congress and the Arbitration Board, has now been rejected by two courts. (App. 11a, 21a-22a, 76a-77a) The district judge was incredulously unable to believe that such a contention was seriously urged. (J.A. in No. 861, p. 146-148). We think the contention may fairly be described as frivolous.

II

The petitioning carriers also seek review of the holding of the Court below that they "have breached their duty to enter negotiations in good faith" (App. 54a) with the labor organizations during the two-year period of effectiveness of the Award. (Petition, pp. 23-27)

Arbitration Board No. 282, in its Award, directed the parties to return to their local properties and negotiate local agreements which would permanently dispose of the crew-consist issue. The interim two-year rules created by the Board were only to govern "pending the consummation of local agreements disposing of the issue, . . ." (App. 104a). During the two-year period the respondent labor organizations, in compliance with the mandate of the Board, served notices proposing agreements which would provide for a crew of

one conductor and two brakemen, in accordance with the standard suggested by the Board. But the petitioning carriers adamantly refused to enter into such agreements, or even to bargain concerning them (J.A., p. 78-79; App. 53a-54a). The Court below held the carriers' refusal to bargain with the respondent ORCB to be justified, on the ground that the notices served by this respondent proposed agreements to become effective during the two-year period of effectiveness of the Board. However, the Court below also held the carriers' refusal to bargain with the BRT and the SUNA to be wrongful on the ground that the notices served by those organizations contemplated agreements to become effective at the end of the two-year period. The Court of Appeals said:

> "They had an obligation, we think, to bargain about changes to become effective with the expiration of the Award. But we also think that they had no obligation to bargain about a proposal to make changes during the life of the Award." (App. 56a)

Petitioners now seek review of that portion of the decision of the Court below, holding that during the two-year period of effectiveness of the Award, they were required to bargain with the labor organizations in an attempt to reach lasting agreements.[2] We submit

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[2] This argument is, of course, addressed to that portion of the decision of the Court below holding that petitioners defaulted in their obligation to bargain with BRT and SUNA. The contention also affects this respondent because, if sustained by this Court, it would necessarily require rejection of the petition for a writ of certiorari filed by the ORCB (No. 862), which seeks review of that portion of the decision of the Court of Appeals holding that the carriers were not obligated to bargain with the ORCB during the two-year period of the effectiveness of the Award, because of alleged procedural error in the language of the ORCB notices.

that the contention of petitioners is plainly contrary to the express intent of Congress and of the Arbitration Board. The President's message to Congress, the House and Senate Committee hearings, and the Award of Arbitration Board No. 282 make clear beyond doubt that the primary purpose of the law, and of the Award, was to create a breathing period of two years during which the parties were expected to make further attempts to resolve their disputes. President Kennedy urged the enactment of legislation which "encourages the parties to achieve their own solutions through collective bargaining" and which would provide "an interim remedy while awaiting the results of further bargaining by the parties," and "for such length of time as the parties are unable to agree by collective bargaining." (Senate hearings, pp. 8-10) Secretary of Labor Wirtz said to the House Commerce Committee that the Administration proposed interim rules for a two-year period because "it seemed to me that that was the period during which a rule could be worked out at that point by agreement, . . ." (House hearings, p. 109). To the Senate Commerce Committee Secretary Wirtz said:

> ". . . what is contemplated here is a decision which would have controlling effect during that period until they agree. No question about it." (Senate hearings, p. 51)

Chairman Walrath of the Interstate Commerce Commission said that, during the two-year period, ". . . at any moment that they reach agreement on any of these issues, they could by that very agreement supersede anything we did." (Senate hearings, p. 412). Mr. Daniel Loomis, President of the Association of Amer-

ican Railroads, urged enactment of the law and denied that it constituted final and binding arbitration saying:

> "I think there what the difference is that compulsory arbitration settles and disposes of a dispute and decides it with finality. This bill or joint resolution does not do that. . . . The resolution has—it lasts only 2 years, and secondly only interim orders can be entered by the Interstate Commerce Commission. And third, then it expires. It also presupposes continued negotiations, too, which you would not have in the case of compulsory arbitration. That would settle the whole matter, compulsory arbitration." (House hearings, p. 565).

And Mr. James E. Wolfe, Chairman of the National Railway Labor Conference, also urging enactment of the law, said:

> "As I understand the resolution, it imposes a duty upon the parties to attempt to settle their differences. But at the same time it is designed to protect the public interest as a result of the establishment of these interim rules for a period of two years or less, while the parties undertake, through collective bargaining, to bring about a more permanent solution to their problems." (Senate hearings, p. 375).

The legislative history contains repeated similar expressions of intent and purpose. This legislative intent culminated in Section III of the Award of Arbitration Board No. 282, which provided that "the issue of crew-consist . . . shall be remanded to the local properties for negotiation . . .", and required maintenance of existing crew-consist rules and practices "pending the consummation of local agreements disposing of the issue, . . ." (App. 104a).

Petitioners seek to justify the breach of their representations to the Congress, their frustration of Congressional intent, and their adamant disobedience of the directive of the Arbitration Board by two arguments. First, they assert that the legislative history is irrelevant because "the Administration's bill was revised to eliminate the requirement for such bargaining." This contention seeks to re-argue the decision of this Court in *Brotherhood of Locomotive Engineers* v. *Chicago, Rock Island and Pacific R. Co.*, 382 U.S. 423 (1966) in which this Court said: "Congress enacted the bill proposed by the President with one significant change." (substitution of a Board of Arbitration for the Interstate Commerce Commission).

Second, the carriers argue that, as a matter of general legal principle, a party to a collective bargaining agreement has no obligation to bargain concerning proposals for modification, termination or extension until after the expiration of the existing agreement. Stated conversely, petitioners contend that a party may not validly open negotiations for a successor agreement until after expiration of the current agreement. Ordinarily where a collective bargaining agreement exists for a specified term it is customary for the parties to serve "openers" looking toward a renewal well in advance of the expiration date. Petitioners' contention that such a notice may only validly be served *after* expiration of the existing agreement would upset well-settled industrial practices of long standing. It would create an unhealthy period of hiatus between the expiration of a collective bargaining agreement and execution of a successor, during which no contract existed between the parties, with all of the industrial strife which such a situation would cause. It would be

contrary to this Court's understanding of the bargaining requirements created by the Railway Labor Act, expressed in *Elgin, Joliet & Eastern Ry. Co.* v. *Burley*, 325 U.S. 711 (1945). There, distinguishing between "major" disputes over the making of new agreements, and "minor" disputes over the interpretation of existing agreements, this Court said:

> "The first relates to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement *or where it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the controversy.* They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.
>
> * * * *
>
> "To settle for the future alone, without reference to or effect upon the past, is in fact to bargain collectively, that is, to make a collective agreement. That authority is conferred independently of the power to deal with grievances, as a part of the power to contract 'concerning rates of pay, rules, or working conditions.' It includes the power to make a new agreement settling for the future a dispute concerning the coverage or meaning of a pre-existing agreement. For *the collective bargaining power is not exhausted by being once exercised; it covers changing the terms of an existing agreement as well as making one in the first place.*" (emphasis added).

And in *Order of Railroad Telegraphers* v. *Chicago & N.W.R. Co.*, 362 U.S. 330 (1960) this Court rejected the contention of a carrier that it was "unlawful" for a labor organization to seek a change in an existing agreement, saying:

> "Plainly the controversy here relates to an effort on the part of the union to change the 'terms' of an existing collective bargaining agreement. . . .

> "Here, far from violating the Railway Labor Act, the union's effort to negotiate its controversy with the railroad was in obedience to the Act's command that employees as well as railroads exert every reasonable effort to settle all disputes 'concerning rates of pay, rules, and working conditions.' 45 U.S.C. § 152, First, 45 U.S.C.A. § 152, subd. 1. Moreover, neither the respondent nor anyone else points to any other specific legal command that the union violated here by attempting to bring about a change in its collective bargaining agreement."

See also: *Order of Railway Conductors and Brakemen* v. *Spokane, Portland & Seattle Ry. Co.*, 366 F. 2d 99 (C.A. 9, 1966) cert. den. 385 U.S. 1025; *Missouri-Illinois R. Co.* v. *Order of Railway Conductors*, 322 F. 2d 793 (C.A. 8, 1963). See also this Court's similar interpretation of an employee's duty to bargain under the National Labor Relations Act, expressed in *N.L.R.B.* v. *Sands Mfg. Co.*, 306 U.S. 332 (1939):

> "The legislative history of the Act goes far to indicate that the purpose of the statute was to compel employers to bargain collectively with their employes to the end that employment contracts binding on both parties should be made. But *we assume that the Act imposes upon the employer the further obligation to meet and bargain with his employes' representatives respecting proposed changes of an existing contract* and also to discuss with them its true interpretation, if there is any doubt as to its meaning." (emphasis added).

While it may well be that parties to a collective bargaining agreement might agree not to seek further negotiations with the other until after the expiration of the agreement, (although the validity of such an

agreement was questioned by the Ninth Circuit in *Order of Railway Conductors and Brakemen* v. *Spokane, Portland and Seattle R. Co.*, supra, and in *Manning* v. *American Airlines, Inc.*, 221 F. Supp. 301, 307 (S.D.N.Y., 1963) aff'd 329 F. 2d 32), such a waiver of statutory right must rest on an agreement between the parties to so refrain. What is involved here is not an agreement, but an arbitration award imposed by law, and its terms and limitations must depend upon the language and intent of the Award and its enabling law. Here it is crystal-clear that, far from prohibiting negotiations during the two-year period, the law intended, and the Award required, such negotiations.

In essence, it is petitioners' contention that they have successfully misrepresented the consequences of enactment of the law to the Congress, violated their commitment to the Congress to bargain, and resisted the command of the Arbitration Board. They ask this Court to put its seal of approval on such conduct in order that they may profit from their own deliberate wrongs. We submit that this contention raises no substantial question of law which meets the standards of Rule 19.

III

During the two-year period of effectiveness of the Award of Arbitration Board 282, the respondent labor organizations served on the petitioning carriers notices proposing crew-consist agreements calling for one conductor and two brakemen. But petitioners, as they stipulated in the District Court (J.A. 78-79), and as found by the Court of Appeals "flatly refused to engage in any statutory bargaining whatever prior to the expiration date . . .", and ". . . must be held to have breached their statutory duty under the Railway Labor

Act to confer and bargain on the merits of the proposed changes in work rules." (App. 53a-54a) This duty was imposed not only by Sections 5 and 6 of the Railway Labor Act (App. 115a-116a) but also by Section III A(1) of the Award (App. 104a).

Several days before expiration of the two-year period, petitioners commenced the instant action, and obtained a temporary restraining order against respondents, enjoining a work-stoppage because of their refusal to negotiate or mediate (J.A. 28). The Court below held the issuance of the restraining order to be erroneous because "the complainants lack clean hands" and were ineligible for injunctive relief by virtue of Section 8 of the Norris-LaGuardia Act. (App. 86a-89a). Petitioners seek review of this ruling (Petition pp. 27-32), arguing that "neither Section 8 nor any other provision of Norris-LaGuardia applies to a restraining order or other injunctive relief designed to compel compliance with a mandate of the Railway Labor Act." Petitioners do not state what mandate of the Railway Labor Act this wrongfully-issued restraining order was designed to enforce compliance with.[3]

---

[3] Petitioners' assertion of error below is directed against a ruling which was in favor of the respondent Brotherhood of Railroad Trainmen. (App. 86a-89a). The Court below held the restraining order to have been properly issued as against the respondent ORCB, on the ground that the Section 6 notices served by this respondent were premature, and did not require bargaining by the petitioning carriers; hence, petitioners were held not to have defaulted any statutory duty to bargain with the ORCB. (App. 89a). The Respondent ORCB has petitioned this Court to review that ruling (No. 862). Petitioner's request that this Court review the portion of the decision below favorable to the BRT is of concern to this respondent for, if this Court should sustain petitioner's contention, it would necessarily require denial of that portion of the petition for a writ of certiorari filed by this respondent.

Simply, petitioners seek reconsideration of this Court's decision in *Brotherhood of Railroad Trainmen* v. *Toledo, P.&W. R. Co.*, 321 U.S. 50 (1943). There, this Court held that Section 8 of the Norris-LaGuardia Act barred injunctive relief to a carrier which had engaged in arbitration and mediation of a labor dispute, as required by law, but which had refused to submit the dispute to binding arbitration, even though the arbitration of "major" disputes is not compulsory. This court said:

> "The question broadly stated, is whether respondent made 'every reasonable effort' to settle the dispute, as the section requires. On the facts this narrows to whether its steadfast refusal to agree to arbitration under the Railway Labor Act's provisions made the section operative. We think it did, with the consequence that the federal courts were deprived of the power to afford injunctive relief and respondent was remitted to other forms of legal remedy which remained available. . . .
>
> Section 8 is not limited to railway labor disputes. But it includes them. And its very terms show they were used in explicit contemplation of the procedures and machinery then existing under the Railway Labor Act and with the intent of making their exhaustion conditions for securing injunctive relief, not singly or alternatively, but conjunctively or successively, when available. . . .
>
> Respondent's failure or refusal to arbitrate has not violated any obligation imposed upon it, whether by the Railway Labor Act or by the Norris-LaGuardia Act. No one has recourse against it by legal means on account of this failure. Respondent is free to arbitrate or not, as it chooses. But if it refuses, it loses the legal right to have an injunction issued by a federal court or, to put the matter more accurately, it fails to perfect the

> right to such relief. This is not compulsory arbitration. It is compulsory choice between the right to decline arbitration and the right to have the aid of equity in a federal court. . . .
>
> Arbitration under the Railway Labor Act was available, afforded a method for settlement Congress itself has provided, and until respondent accepted this method it had not made 'every reasonable effort to settle' the dispute, as Section 8 requires."

See also, *Order of Railroad Telegraphers* v. *Chicago & N.W. R. Co.*, 362 U.S. 330 (1960); *Rutland Railway Corp.* v. *Brotherhood of Loc. Eng.*, 307 F. 2d 21, 39 (C.A. 2, 1962); *Butte, Anaconda & P. Ry. Co.* v. *Brotherhood of Loc. F. & E.*, 268 F. 2d 54, 60 (C.A. 9, 1959). In other instances this Court and the Courts of Appeals have denied injunctive relief to carriers which have failed to exhaust the remedies required by the Railway Labor Act, without specific reference to Section 8. See *Manion* v. *Kansas City Terminal Ry. Co.*, 353 U.S. 927 (1957); *Hilbert* v. *Pennsylvania R. Co.*, 290 F. 2d 881, 885 (C.A. 7, 1961); *Westchester Lodge 2186* v. *Railway Express Agency*, 329 F. 2d 748, 753 (C.A. 2, 1964).

The instant case is *a fortiori*. Here, petitioners did not merely decline the voluntary step of arbitration, but the precedent legally-required steps of conference and mediation. The ruling of the Court below that this refusal barred petitioners from injunctive relief was entirely in accord with prior applicable decisions of this Court, and raises no question warranting review.

CONCLUSION

Respondents have heretofore filed petitions for a writ of certiorari seeking review of other portions of the decision below. But the questions presented by the petitioning carriers in No. 863 raise no serious issues or important questions which merit the consideration of this Court. Questions 1 and 2 present no serious or meritorious issue, and question No. 3 merely seeks to reargue a prior decision of this Court. Respondent respectfully submits that the petition presents no question which meets the standards of Rule 19 of the Court, and should be denied.

Respectfully submitted,

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December 28, 1967